

Vol 317
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

✓
No. 636

ISIDORE H. SCHWEIDEL,

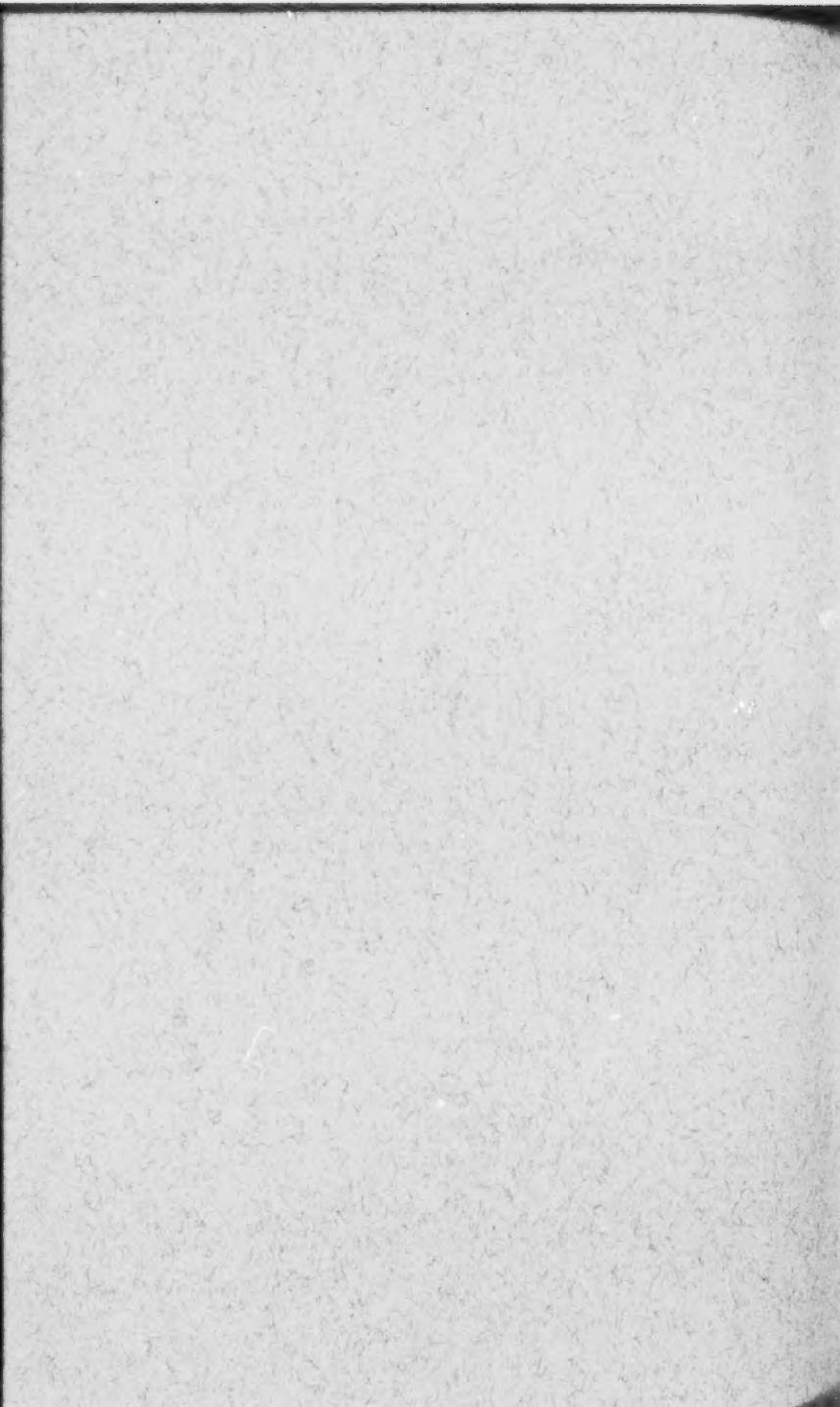
Petitioner,

vs.

**LEHIGH VALLEY RAILROAD COMPANY, LEHIGH
VALLEY RAILWAY COMPANY, ET AL.**

**PETITION FOR WRIT OF CERTIORARI TO THE DIS-
TRICT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF PENNSYLVANIA.**

LEMUEL B. SCHOFIELD,
Counsel for Petitioner.



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LEHIGH VALLEY RAILROAD COMPANY, LEHIGH VALLEY RAILWAY COMPANY, LEHIGH VALLEY RAILROAD COMPANY OF NEW JERSEY AND PENNSYLVANIA AND NEW YORK CANAL AND RAILROAD COMPANY.

ON PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioner, Isidore H. Schweidel, prays the issuance of a Writ of Certiorari to review the order of the Special court convened under Chapter XV of the Chandler Act in the Eastern District of Pennsylvania entered October 21,

1940, which dismissed his petition for the allowance of fees for services and reimbursement of expenses, for alleged want of jurisdiction.

Opinion Below.

There was no opinion filed by the court below. The court merely entered an Order dismissing the petition on the authority of *In re Baltimore & Ohio R. R. Co.*, 34 Fed. Supp. 154.

Jurisdiction.

The jurisdiction to review the Order of the Special court is invoked under Section 745 of Chapter XV of the Chandler Act (11 U. S. C. A., Sec. 1245), which authorizes a review by this Court on certiorari of any final order or decree of the Special court within sixty days after the entry of such order or decree.

History of the Case.

On August 7, 1939, Lehigh Valley Railroad Company, and certain of its subsidiaries, filed their petition for modification of their interest charges and maturities, and for approval of a plan of adjustment in accordance with the provisions of Chapter XV of the Chandler Act (11 U. S. C. A., Sec. 1200-1245).

On or about December 1, 1939, petitioner, a member of the Philadelphia Bar, and two associates, Cecil M. Page, Esq. and Stewart M. Seymour, Esq., both members of the New York Bar, were consulted and retained by one Greydon A. Rhodes, a holder of \$27,000 in principal amount of the Lehigh Valley General Consolidated mortgage bonds (which bonds were affected by the proposed plan of adjustment), to inquire into the status of the proceedings, more particularly with reference to the loss sustained by the Lehigh Valley Railroad Company in the Black Tom Explosion in 1916. Petitioner and his associates were permitted to inter-

vene in the proceedings on or about February 8, 1940, and from that time to the end of the proceedings and the final approval and confirmation of the plan of adjustment, petitioner was active in the proceedings, and from time to time rendered valuable service both to the Court and to the Lehigh Valley Railroad Company.

As the conclusion of the proceedings, petitioner as well as others filed a petition for an allowance for counsel fee and expenses, and on October 21, 1940, the Special Court entered an order dismissing petitioner's request for an allowance for want of jurisdiction to entertain the request, since it was not authorized by the Lehigh Valley Railroad (R. 14-17).

Statement of Facts.

The petitioner, for himself and his associates, Cecil M. Page, Esq., and Stewart M. Seymour, Esq., on September 4, 1940, filed a petition with the Special Court requesting an allowance for counsel fees for services rendered the Estate, and for reimbursement of costs expended by him and his associates (R. 2-10).

The petitioner set forth in detail the services rendered by petitioner and his associates, the manner in which those services aided the Special Court and the Estate, and the number of hours expended by petitioner and his associates (R. 3-9).

No answer to this petition was filed by the Railroad Company, so that the facts contained in the petition may be taken to be admitted. But on September 11, 1940, the day set by the Special Court for a hearing on the various petitions for allowances, any allowance to petitioner was objected to by counsel for the Railroad Company, on the ground that the Honorable Calvin W. Chestnut, in the case of *The Baltimore and Ohio Railroad Company, et al.*, 34 Fed. Supp. 154, in an opinion filed September 3, 1940,

had denied the right of the Special Court to make any allowances for fees or expenses other than those incurred by the Railroad itself (R. 17).

The objection of the Railroad Company was sustained by the Special Court in its final order of October 21, 1940.

Specification of Errors.

The Special Court for the Eastern District of Pennsylvania erred:

(1) In determining that it had no jurisdiction to entertain the petition for counsel fee and reimbursement of costs.

(2) In determining that Section 725 of Chapter XV of the Chandler Act (11 U. S. C. A. Sec. 1225) is a limitation of the powers of the Special Court to allow expenses and compensation to attorneys for creditors who rendered services to the Court and to the Estate.

Questions Presented.

I. Is Section 725 of Chapter XV of the Chandler Act (11 U. S. C. A. 1225) a limitation of the powers of the Court to allow compensation to attorneys who rendered services to the Estate in connection with the proceedings over which it had jurisdiction of the parties and the subject matter?

II. Does Section 725 of Chapter XV of the Chandler Act (11 U. S. C. A. 1225) limit the Special Court to the approval only of such expenditures as have been incurred by the debtor railroad?

III. Does not the Special Court convened under Chapter XV of the Chandler Act have the same power to grant allowances for counsel fees and costs as are conferred upon a District Court under the Bankruptcy Act as amended?

Reasons for Granting the Writ of Certiorari.

The Special Court was vested by Section 713 of Chapter XV of the Chandler Act (11 U. S. C. A. 1213) with all the powers of a District Court sitting in equity and all the powers as a court of bankruptcy and possessed the power to allow expenses and fees, and it erred in denying expenses and fees on the ground that it lacked such power.

The Special Court arrived at the conclusion that it was without jurisdiction to grant fees and expenses by reason of an opinion filed by Judge Chestnut of the Special Court of Maryland *In re Baltimore and Ohio Railroad Co.* (34 Fed. Supp. 154). It is submitted that the opinion of Judge Chestnut was erroneous. That jurist based his opinion on a narrow construction of Section 725 (11 U. S. C. A. Sec. 1225) with respect to "approval of expenditures".

He did not exercise the jurisdiction as in the case of a Court of Equity having general jurisdiction over a fund in its control or possession, with the duty to distribute it equitably. In arriving at that conclusion he completely overlooked Section 700 (11 U. S. C. A. Sec. 1200), which reads:

"In addition to the jurisdiction otherwise exercised, Courts of Bankruptcy shall exercise original jurisdiction, as provided in this Chapter, for postponements or modifications of debts, interest, rent, and maturities or for modifications of the securities or capital structures of railroads."

and Section 713 (11 U. S. C. A. Sec. 1213) which reads:

"Such Three Judge Court shall be vested with and shall exercise all the powers of a District Court sitting in Equity, and all the powers as a Court of Bankruptcy necessary to carry out the intent and provisions of this

Chapter, including the classification of claims at such time and in such manner as the court may direct."

The Special Court was, therefore, vested with all the powers of Equity and Bankruptcy Courts, without limitation.

(a) The Special Court *under its equity powers*, expressly conferred upon it by the Act, *has inherent power to allow fees* to attorneys representing creditors who performed services of value to the estate, whether or not it had any fund in its possession.

It is well settled that in the absence of a statute, *a court of equity has the inherent power to allow compensation for services rendered by attorneys which are beneficial to the estate*. It is not necessary that the court be possessed of a "fund", but it is sufficient if the Court has *constructive possession* of the "res" (*Wallace v. Fiske*, 80 F. (2d) 697, 901). While Chapter XV has taken away the power of the Court to take *actual* possession by the appointment of a Trustee or Receiver, *it was expressly given the constructive possession by the terms of the Act*. (Chapter XV, Section 715 (11 U. S. C. A. 1215).)

Authorities holding that a court of equity has the inherent "power" to allow such compensation are abundant, and are collected in 49 *A. L. R.* at page 1150, and in the subsequent annotation in 107 *A. L. R.* at page 750. Among the cases cited are: *United States v. Equitable Trust Co.*, 283 U. S. 738, and *First National Bank v. LaSalle-Wacker Building Corp.*, 280 Ill. App. 188, which cite many decisions of the Supreme Court of the United States in support of the proposition that a court of equity may allow compensation to attorney representing parties who were helpful to the court in passing upon a reorganization plan, *even where no fund was brought into the court*. There, attor-

neys for some bondholders had *opposed* a reorganization plan and made suggestions for its modification.

Chapter XV, Sec. 715 (11 U. S. C. A. Sec. 1215) gave the court the "*exclusive jurisdiction of the petitioner and its property, wherever located.*" The court was therefore possessed of the property of the petitioner and of the funds to be administered by it, and the cases applicable to instances where attorneys bring in funds to a court have no application to cases involving the administration of trusts where the court has actual or constructive possession of all the assets of the debtor. In such cases, it is not a question of jurisdiction to allow the fee or the power or authority to do so, but the exercise of discretion. In some instances the court may even allow compensation to an unsuccessful party, where the party was brought into the proceeding and his attorney was compelled to defend, as illustrated by *Freeman v. Shreve*, 86 Pa. 135, 138:

"He will often order such *compensation to counsel for a losing party* who is decreed to have no interest, on the equitable ground that being a necessary party he was compelled to litigate or had sufficient reason. *It is a charge which the fund ought in equity and good conscience to bear.*"

In *Trustees v. Greenough*, 105 U. S. 527, the court held that attorneys representing bondholders who are brought into the litigation may be allowed fees out of the trust estate when they have performed services for the benefit of the estate, on the theory that such attorney "has at least acted the part of a trustee in relation to the common interest."

In *Siebert v. Minneapolis & St. L. Railway Co.*, 58 Minn. 58, the court considered the question whether attorneys for bondholders who were brought into the case were entitled to compensation for services rendered for the common ben-

efit of the beneficiaries. The court applied the doctrine that such attorneys who rendered services to the estate have performed the services which the trustee might have performed and would be allowed to charge the trust estate. The court said on page 64:

“And if, for any reason, the bondholders are permitted to appear in the action for the purpose of protecting the trust property, and do, in whole or in part, what the trustee might have thus done, it seems to us that there can be no doubt of the power of the court, upon a proper showing, to make the same reimbursement to them which it might have made to the trustee had he performed the same services and incurred similar expenses. This does not mean that both should be paid for the same thing, but that, after determining the amount which should be allowed for expenses necessarily or reasonably expended in preserving and protecting the trust property, the court may apportion the amount between the trustee and the bondholders, or award it all to one of them, according to the equities of the case.”

These cases illustrate a legal principle which was not considered by Judge Chestnut, upon whose opinion the Special Court relied. Here, Chapter XV provides that notice be given to all parties in interest and that they are all entitled to a hearing. It would be unreasonable to expect that individual investors should be brought into a proceeding involving an estate and be compelled to defend their rights without having the estate, which invoked the proceeding, bear the expenses.

(b) The Special Court was also vested with the general power of a Court of Bankruptcy, and the power to allow the compensation was inherently in such court in the absence of any restriction by Chapter XV.

We have shown that Section 1213 conferred on the Special Court the general power of a court of bankruptcy in addition to the equity powers. *The power of a court of bankruptcy to allow compensation is not limited or restricted.* Its “jurisdiction” or “power” is without limitation (Collier on Bankruptcy, 13th Ed. 1940, Vol. II, Sections 23.03 and 23.04).

Judge Chestnut overlooked the fact that a Special Court convened under Chapter XV had the “*power and authority of a combined equity and bankruptcy court*” specifically vested in it by Section 713 of Chapter XV (11 U. S. C. A. 1213).

II.

Section 1225 is a limitation on the power of the railroads to incur expenditures without the approval of the court, but is not a limitation on the power of the court to allow compensation to attorneys who rendered services to the estate.

Judge Chestnut erred in interpreting Chapter XV as a separate and distinct Act, having no connection with any other Act of Congress. Chapter XV is an integral part of the Bankruptcy Act as amended and now known as the Chandler Act. The very title of Chapter XV shows it so to be, this Chapter being titled:

“AN ACT

To amend an Act entitled ‘An Act to establish a uniform system of bankruptcy throughout the United States’, approved July 1, 1898, and Acts amendatory thereof and supplementary thereto.

Be It Enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That the Act of July 1, 1898, entitled ‘An Act to establish a uniform system of bankruptcy throughout the United States, as amended, is hereby

further amended by adding thereto a new chapter to be designated chapter XV, and to read as follows:

Section 700 (11 U. S. C. A. Sec. 1200) provides:

“In addition to the jurisdiction otherwise exercised, courts of bankruptcy shall exercise original jurisdiction, as provided in this chapter, for postponements or modifications of debt, interest, rent, and maturities or for modifications of the securities or capital structures of railroads.”

Chapter XV is not a separate Act which Congress intended should stand on its own bottom, but rather it is part and parcel of the Chandler Act. It is respectfully submitted that it was on this point that Judge Chestnut erred, for a reading of his opinion clearly indicates that he construed Chapter XV not as a part of the Bankruptcy Act, but as legislation standing separate and apart from any other Act of Congress. He states in his opinion, 34 Fed. Supp., p. 160:

“The nature of the case is not one where a Court of equity has general jurisdiction over a fund in court, with incidental power to make allowances out of the fund to counsel of parties who have performed services to bring the fund into court or to preserve it. The provision of the Act in Section 1225(6) with regard to approval of expenditures of the petitioners, including legal expenses, *is the only reference to the subject in the whole Act.*”

This is contrary to Section 1215, which provides:

“Sec. 1215. If the petition is approved by the special court, the said court, during the pendency of the proceedings under this Chapter, shall have exclusive jurisdiction of the petitioner and of its property wherever located to the extent which may be necessary to protect the same against any action which might be inconsistent with said plan of adjustment or might interfere

with the effective execution of said plan if approved by the court, or otherwise inconsistent with or contrary to the purposes and provisions of this chapter; provided, however, that nothing herein contained shall be construed to authorize the court to appoint any trustee or receiver for said properties or any part thereof, or otherwise take possession of such properties or control the operation or administration thereof."

The Court does have exclusive jurisdiction of the petitioner and of its property wherever located, and the only limitation of this exclusive jurisdiction is that the Court cannot appoint any trustee or receiver for the Railroad, or take possession of any property of the Railroad, or control the Railroad's operation or administration.

Furthermore, if Judge Chestnut meant by "the whole Act", Chapter XV, then such an interpretation is incorrect, because Chapter XV is not "the whole Act" but only one of fifteen chapters which constitute the Act. He further erred when he found as a matter of law that Section 1225(6) was the only section in the Act which dealt with the payment of fees.

It is submitted that Section 1225(6) was not intended by Congress to be the controlling section covering fees. A reading of the full section will make this apparent. Without endeavoring to quote the entire section, but merely to paraphrase it, we find that the Act provides as follows:

"If the Court Shall Find:

- (1) That the plan has been assented to by two-thirds of all classes of claims affected by the plan;
- (2) That the plan has been accepted by three-fourths of the aggregate amount of the claims affected;
- (3) That the plan is fair and equitable as an adjustment;
- (4) That the necessary corporate acts have been taken;

(5) That the petitioner has not acted so as to bar itself from a discharge in bankruptcy;

(6) That, after hearings for the purpose, all amounts or considerations, directly or indirectly paid or to be paid by or for the petitioner for expenses, fees, reimbursements or compensation of any character whatsoever incurred in connection with the proceeding and plan, or preliminary thereto or in aid thereof, together with all the facts and circumstances relating to the incurring thereof, have been fully disclosed to the Court so far as such amounts or considerations can be ascertained at the time of such hearings, that all such amounts or consideration are fair and reasonable, and to the extent that any such amounts or considerations are not then ascertainable, the same are to be so disclosed to the Court when ascertained, and are to be subject to approval by the special court as fair and reasonable, and except with such approval no amounts or considerations covered by this clause (6) shall be paid."

After the Court has found all of those six requirements, then

"Said Court shall file an opinion setting forth its conclusions, the reasons therefor, etc."

It is respectively submitted that this section does not specifically direct the payment of counsel fees, but only requires the Court to determine the reasonableness thereof before approving the plan. The right to direct payment by compensation for services to the estate is inherent in the Special Court by virtue of the statutory grant of the power of an equity and bankruptcy court. Congress had in mind that the Railroad would continue to function and operate during the pendency of these proceedings, and knowing that in order to do so certain expenses would be incurred,

decided to place a check upon such expenditures. That is the sole purpose of Section 1225(6). This thought is also expressed in Judge Chestnut's opinion, 34 Fed. Supp. 155, as follows:

"The evident purpose of the requirement of section 1225(6) of Chapter XV is, in the interest of the security holders of the corporation, that funds which might otherwise be applicable to payment on their securities, shall not be wasted or lavishly disbursed for purposes or in amounts other than are reasonably and properly necessary for successful prosecution of the Plan."

Section 1225(6), on which Judge Chestnut relied, is *not a restriction or limitation of the power of the court to allow compensation*, but is *a restriction on the powers of the Railroad to incur large expenditures without the approval of the court*. This section was evidently inserted because the usual power to manage the affairs of the Railroad by the appointment of a Receiver or Trustee was not granted, and Congress used this means to protect the estate against large expenditures over which the court would otherwise have no control. In other words, Congress did not want, on the one hand, to deprive the creditors of their remedies and deprive the courts of their power to protect the creditors, and, on the other hand, to give absolute power to the debtor to incur extraordinary expenses during such period. *The Act therefore limited the Debtor's power to expend its funds without the sanction of the court. This in no sense was a limitation on the power of the court to pay for services rendered to the estate.*

This provision of Chapter XV is not susceptible to any construction other than the one for which we contend. If Congress had intended that the only fees to be paid in these re-adjustments were the fees enumerated in 1225(6), Con-

gress would have expressly so stated, for an examination of other chapters of the Chandler Act, of which Chapter XV is merely a part, clearly shows such a limitation expressly stated in certain instances.

To illustrate: Chapter VIII, having to do with Agricultural Adjustments and Railroad Corporations, 11 U. S. C. A. 204(a) (4) and 11 U. S. C. A. 205 (c) (12); Chapter X, having to do with Corporate Reorganizations generally, 11 U. S. C. A. Sections 641, 642, 643; Chapter XI, having to do with arrangements by individuals, 11 U. S. C. A. Sections 737 (2); Chapter XII, covering real property arrangements, 11 U. S. C. A. Section 893; and Chapter XIII, having to do with wage earners, 11 U. S. C. A. Section 1059, all expressly list those entitled to compensation from the corpus of the estate subject to the Court's jurisdiction.

However, in each one of these Chapters, except Chapter VIII, there is the provision:

“The provisions of this chapter shall apply exclusively to proceedings under this chapter.”

This provision of exclusive application does not appear in Chapter XV.

The first seven chapters of the Chandler Act is in essence a re-enactment of the General Bankruptcy Act of 1898. Chapter VII, (11 U. S. C. A. 102) which deals with the general bankruptcy powers of the Court, provides that counsel performing services for the benefit of the estate are entitled to fees.

Since Chapter XV is silent on the question of compensation for counsel who have performed services, and does not have the exclusion provisions of Chapters X, 11 U. S. C. A. 501, XI, 11 U. S. C. A. 701, XII, 11 U. S. C. A. 801 and XIII, 11 U. S. C. A. 1001, it follows that it must have been the intention of Congress that the general provisions of the

Bankruptcy Act with respect to fees should apply to proceedings under Chapter XV. This is particularly so in view of the language of Chapter XV, Sections 1200 and 1213, which preserves to the Special Court sitting as a District Court the general powers of equity and bankruptcy jurisdiction which the District Court had prior to the enactment of Chapter XV.

Reference was heretofore made with respect to Chapter X, having to do with corporate reorganizations generally, and listing the persons entitled to compensation. In the case of *In re Utilities Power and Light*, 43 A. B. R. (N. S.) 283, the very question of compensation for an attorney who apparently did not come within the classification under Chapter X was considered by the Court. In that case, holders of Class A and Class B stock, in the reorganization were found to have no equity, and, therefore, not entitled to participate in the reorganization proceedings. Nevertheless, counsel representing these classes of stock, who had performed services in connection with the proceedings, applied for a fee, and the Court sought to compensate him. The Court held that if counsel could show that he had rendered services which were compensable under the provisions of the Chandler Act, he was entitled to an allowance, even though the interest of security-holders which he represented had been eliminated. It was held that he need only show that he had contributed to the plan or rendered services which were beneficial in the administration of the estate.

In the case of *Millbank, Tweed & Hope v. McCue, et al.*, 111 Fed. 111, 112, the District Court of West Virginia disallowed a claim for counsel fee to counsel for the debtor for prosecuting appeals relative to jurisdiction which in no way contributed to the plan of reorganization. On appeal, the Circuit Court of Appeals for the Court Circuit held:

“The Court below held that although the debtors efforts to establish the jurisdiction in New York may have been in good faith, the controversy did not contribute in any way to the formation of the plan of reorganization, but, on the contrary, delayed the consummation for more than a year, and, therefore, no fee should be paid to debtor’s attorneys. * * * While, as stated by the Court below, this controversy was of no benefit to the estate, we cannot say that it was groundless or lacking in good faith; and in view of the confusion then prevailing as to the law, we think that the services should be considered in fixing the compensation of counsel for the debtor.”

The Bankruptcy Act is remedial in its nature, and as such must be so *reasonably* and *liberally* construed as to promote justice (*Bear v. Chase*, 99 Fed. 916, 920; *Many v. Mood*, 37 F. (2d) 212, 214, C. C. A. 4).

Under Chapter XV, as under every chapter of the Chandler Act, and under every section of the Bankruptcy Act and its amendments, the Court is a Court of Equity, to render justice with equity and practicability. To hold, as did Justice Chestnut, that the principles of equity do not apply to Chapter XV would be in the teeth of the express provisions not only of Chapter XV but of the entire Chandler Act. Judge Chestnut’s interpretation was not and could not have been an expression of the intent of Congress in the enactment of Chapter XV, for the very purpose of the Chapter is to give railroad companies relief from the onerous burdens caused by the depression years. Sections 1200 and 1213 specifically recognize this. To deprive those persons who in good faith have rendered distinct services which have aided the Court, the debtor, and its creditors in effecting an equitable Plan of Adjustment, merely because they have not actually been retained by the debtor to do the

things they have done, would thwart the intent of Congress and result in gross injustice.

WHEREFORE, it is respectfully submitted that this Petition should be granted.

Respectfully submitted,

LEMUEL B. SCHOFIELD,
Attorney for Petitioner.

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